

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF MARICOPA AND
ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY, ARIZONA**

This Intergovernmental Agreement (IGA) is entered into this 21 day of February, 2012, between the CITY OF MARICOPA, a municipal corporation of the State of Arizona ("MARICOPA"), and ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY, ARIZONA, an electrical district and a political subdivision of the State of Arizona ("ED3"). Each of the Participants (as defined above) may sometimes be individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

- A. MARICOPA is a municipal corporation vested with the power to regulate the use of streets and Rights-of-Way ("ROWs") within MARICOPA limits.
- B. ED3 pursuant to ARS § 48-1749 from time to time installs, repairs, replaces overhead electrical poles and lines, street lights and underground electrical facilities within MARICOPA'S ROWs.
- C. MARICOPA recognizes that the utility service provided by ED3 is a benefit to the community, and that ED3 is the only electrical provider for MARICOPA.
- D. In view of expected future residential and commercial development within MARICOPA limits and in the area to be served electricity by ED3, the Parties believe that it is in their mutual best interests to resolve any potential disputes relating to these matters and to enter into this Agreement setting forth their joint understanding relating to future activities in the area lying within MARICOPA limits and ED3 boundaries.
- E. MARICOPA is authorized to enter into the Agreement pursuant to ARS § 9-240 and ED3 is authorized to enter into this Agreement pursuant to ARS § 11-952, 48-1747 and 48-1749.

NOW THEREFORE, in consideration of the mutual covenants, benefits, and premises here stated, the Parties hereto agree as follows:

AGREEMENT

- 1. **DEFINITIONS.** The following words and phrases when used in this Agreement shall have the meanings set forth in this section.
 - a. **"City Limits"** means the municipal limits of the City of Maricopa, as may be amended from time to time by City Ordinance. A map of the City Limits is attached as Exhibit A hereto. MARICOPA shall promptly notify ED3 of any amendments to the City Limits after the Effective Date of this Agreement.

- b. **“ED3 Facilities”** means all Electrical Transmission and Distribution Facilities and Street Lighting Facilities.
- c. **“Effective Date”** shall mean the last date of which this Agreement is approved by the governing bodies of the Parties and executed by the Parties.
- d. **“Electric Transmission and Distribution Facilities”** means ED3’s electric power lines, including poles, towers, substations, wires, cables, conduits, transmission and distribution lines, transformers, switches and signals, including all associated equipment, appurtenances and communications infrastructure.
- e. **“City Streets”** means present and future public streets, alleys, ways, highways and bridges within MARICOPA Limits, including ROWs under the control of MARICOPA including the Easements established in the 1922 Declaration of Road document as recorded in Pinal County as Docket 375 Pages 573 and 574.
- f. **“Managers”** means the General Manager for ED3 and the City Manager for MARICOPA.
- g. **“Street Lighting Facilities”** means poles, mast arms, luminaries, lamps, deflectors, shields and other minor appurtenances, internal wiring and wiring down to the hand hole of the pole, ballasts, constant current regulators photocells and relay equipment and lines and related equipment necessary to connect the Street Lighting Facilities to ED3’s Electrical Transmission and Distribution Facilities.

2. **FEES.**

- 2.1 **ED3 Fees.** ED3 will waive all security deposits and the initial connection charges for all MARICOPA owned facilities provided MARICOPA obtains all necessary permits for the installation and connection of electrical facilities.
- 2.2 **MARICOPA Fees.** MARICOPA will waive all Permit Charges for ROWs access for ED3 provided that ED3 obtain all necessary permits for use of MARICOPA ROWs. Said Permits will be issued for the purpose of carrying out the statutory authorization set forth in ARS § 48-1749. MARICOPA hereby authorizes ED3, or their authorized agents, to conduct work within MARICOPA’S ROWs under non-emergency conditions, provided ED3 give MARICOPA at least ten (10) days advance written notice. For routine maintenance, MARICOPA will issue an Annual Permit to ED3.

3. USE OF CITY STREETS.

3.1 **General.** ED3 and its agents, representatives and contractors shall have the right to construct, maintain, repair and operate ED3 Facilities upon, over, along, across and under the present and future City Streets for the purpose of supplying energy.

3.2 **Construction.**

3.2.1 All construction pursuant to Paragraph 3.1 shall be performed in accordance with established practices of MARICOPA with respect to City Streets. Before ED3 makes any installations in City Streets, ED3 shall apply for a work permit in accordance with all existing ordinances and regulations of MARICOPA. If ED3 does not comply with the MARICOPA requirements for the application of permits, ED3 shall be responsible for any penalties established in MARICOPA ordinance governing acquisition of work permits.

3.2.2 In all cases of emergency, as determined solely by ED3, ED3 shall give written notice to MARICOPA within twenty-four (24) hours of the incident or as soon as reasonably possible under the circumstances. When the repair of the incident involves the alteration of vehicular travel, traffic control shall be provided by ED3 per the most current standard specifications in the Manual on Uniform Traffic Devices (MUTCD).

3.2.3 Any permit issued by MARICOPA shall be maintained at all times in ED3 vehicle operating within City Streets and will be made available to MARICOPA'S personnel upon request.

3.2.4 MARICOPA agrees that such uses of City Streets by ED3 will be without charge as long as ED3 complies with the terms of this Agreement.

3.2.5 If MARICOPA undertakes, either directly or through a contractor, any construction project adjacent to or near ED3 Facilities, MARICOPA shall include in all such construction documents, a requirement that, as part of the cost of the project, the contractor or its designee must pay for and obtain from ED3 the temporary removal, barricading or de-energization of ED3's lines or equipment, the location of which may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor.

3.3 **Construction and Relocation of ED3 Facilities.** All ED3 Facilities installed or constructed pursuant to this Agreement shall be so located or relocated and so erected as to minimize the interference with traffic or other authorized uses over, under, or through the City Streets insofar as reasonably and economically possible. Those phases of construction of ED3 Facilities relating to traffic control, backfilling, compaction, and paving,

as well as the location or relocation of lines and related facilities provided for herein shall be subject to regulation by MARICOPA. ED3 shall keep accurate records of the location of all ED3 Facilities in City Streets and furnish them to MARICOPA upon request in a format that is mutually acceptable to the Parties.

3.3.1 If MARICOPA requires ED3 to relocate ED3 Facilities that are located in private easements, the entire cost of relocating ED3 Facilities into a new private easement (including the cost of purchasing such new private easement if necessary) or Public Utility Easement (PUE) shall be borne by MARICOPA or by any developer or person other than the ED3, as required by MARICOPA. MARICOPA shall also bear the entire cost of any additional MARICOPA required subsequent relocations of the relocated ED3 Facilities, until such time as MARICOPA condemns or purchases the private easement or PUE. Notwithstanding the last two (2) foregoing sentences, MARICOPA shall be required to purchase a replacement private easement only if a free private easement is not held or cannot be acquired by ED3. ED3 shall cooperate with MARICOPA, to the extent reasonably possible, in obtaining any required new private easement.

3.3.2 Except as provided in Paragraph 3.3.1 above, ED3 shall bear the entire cost of relocating ED3 Facilities located on City Streets, the relocation of which is necessary for MARICOPA'S carrying out of its governmental functions. Notwithstanding the foregoing, if ED3 is requested to perform work of a temporary nature on a MARICOPA project to relieve construction problems, which could be relieved by other reasonable means, the cost of said temporary work will be borne by MARICOPA or the contractor working on the MARICOPA project. Governmental functions are:

- a. Any duty imposed by the State or Federal Government on MARICOPA;
- b. Any and all improvements to City Streets by MARICOPA;
- c. Establishing and maintaining sanitary sewers, storm drains, and related facilities;
- d. Establishing and maintaining MARICOPA parks, parkways, pedestrian malls, or grass, shrubs, trees, and other vegetation for the purpose of landscaping any City Streets or public property;
- e. Providing fire protection; and
- f. Collection and disposal of garbage.

- 3.3.3 Where MARICOPA facilities or other facilities occupying a City Street under authority of a MARICOPA permit or license are already located in the ROWs and a conflict between ED3's potential facilities and the existing facilities can be resolved expeditiously only by relocating the existing MARICOPA or permittee facilities, ED3 shall bear the entire cost of relocating the existing facilities, regardless of the function they served.
- 3.3.4 If MARICOPA participates in the cost of relocating ED3 Facilities for any reason, the cost of relocation to MARICOPA shall not include any upgrade or improvement of ED3 Facilities, as they existed immediately prior to relocation.
- 3.3.5 MARICOPA will consult with ED3 regarding tree species approved for planting in City Streets where there are existing overhead power lines. ED3 shall have the authority to trim, prune, or remove any trees or shrubs located within or hanging upon and over City Streets that in the judgment of the ED3 may interfere with the construction of or endanger the operation of ED3 Facilities. All work is to be done at ED3's expense.
- 3.4 **Restoration of City Streets.** Whenever ED3 shall cause any opening or alteration whatsoever to be made for any purpose in any City Street, the work shall be completed with due diligence within a reasonably prompt time, and ED3 shall, upon completion of such work, restore the property disturbed as reasonably possible to as good condition as it was prior to such opening or alteration. If ED3 fails to promptly restore the property to such condition within a reasonable time and after notice by MARICOPA, MARICOPA may make such repairs and ED3 shall be responsible for the actual cost of such work. Except as provided herein, ED3 shall not be subject to any penalties or fees imposed by MARICOPA for such activities.
- 3.5 **Records of Location of Facilities.** ED3 shall furnish MARICOPA with records of ED3 Facilities it installs within the City Limits and any changes that may take place from time to time in an electronic format that is mutually acceptable to the Parties to enable MARICOPA to keep its maps and records current unless prohibited by Homeland Security or other governmental agency due to security reasons.
- 3.6 **Records of Conditions of Service.** ED3 agrees to file with MARICOPA its general conditions of service, and to supplement the same from time to time as they may be amended. The conditions of service shall include, but not be limited to, the following:
- a. The name and location of ED3's office;
 - b. The phone number;
 - c. An emergency phone number;

- d. Customer service guidelines;
- e. A current rate schedule or similar description of rates and fees charged

4. **INDEMNIFICATION.** To the fullest extent permitted by law, each Party to this Agreement shall indemnify, defend, save and hold harmless the other Parties, their officials, employees and agents from any and all suits, actions, claims, demands, and losses, costs, or damages of every kind and description, including reasonable attorney's fees, arbitration and litigation expenses which may be brought or made against or incurred by the other Parties due to injuries, death, or damages received or sustained by any person, persons, or property due to any negligent act, omission, neglect, or misconduct by the Party, its officials, employees, and agents arising under this Agreement.

5. **TERM**

5.1 The initial term of the Agreement shall be ten (10) years from the Effective Date, unless terminated earlier as provided herein. Unless either Party gives written notice to the other Party at least ninety (90) days prior to expiration of the initial term of its intent NOT to renew, the Agreement shall be automatically extended an additional ten (10) years unless terminated earlier as herein provided.

5.2 Either Party may terminate this Agreement by providing thirty (30) days advance written notice of termination to the other Party.

6. **MISCELLANEOUS PROVISIONS.**

6.1 This Agreement is subject to the cancellations provisions of ARS § 38-511.

6.2 This Agreement and any attachments represent the entire agreement between the Parties and shall supersede all prior negotiations, representations or agreements; either express or implied, written, or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

6.3 Whenever approvals are required, they shall not be unreasonably withheld. Should any dispute arising between the Parties concerning the terms or conditions of this Agreement or the implementation or interpretation of this Agreement remain unresolved for a period of one (1) month, such dispute shall be forwarded to the Managers, who shall meet within fifteen (15) days (or such shorter or longer time as agreed upon between the Managers) to discuss and attempt to reach a resolution of the dispute. Any resolution mutually agreed upon by the Managers shall be binding upon the Parties.

If the respective Managers cannot resolve the dispute within thirty (30) days of its submission to them (or within such longer time as shall be mutually agreed upon by the Managers), the Parties may pursue any remedies available to them at law, in equity, or under this Agreement to resolve the dispute.

- 6.4 All notices or demands upon any Party to the Agreement shall be in writing and shall be delivered in person, by facsimile, or sent by First Class Certified Mail, postage prepaid, return receipt requested, addressed as follows:

CITY OF MARICOPA

Attn.: City Manager
P. O. Box 610
Maricopa, AZ 85239
Office: (520) 568-9098
Fax: (520) 568-9120

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

Attn.: General Manager
41630 W. Louis Johnson Drive
Maricopa, AZ 85138-5402
Office: (520) 424-9311
Fax: (520) 424-3281

- 6.5 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.
- 6.6 By executing this Agreement or amendment thereof, each Party represents and covenants that this Agreement, its execution and fulfillment of its terms, conditions, responsibilities and obligations have been duly authorized by the respective governing bodies of each Party.
- 6.7 The failure of any Party to insist in any one (1) or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.
- 6.8 The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.
- 6.9 In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the

prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

- 6.10 No Party to this Agreement shall assign its interest in the Agreement, either in whole or in part without the prior written consent of the other Parties.
- 6.11 If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- 6.12 Any undertaking by one (1) Party to the other Party under any provision of this Agreement shall not constitute the dedication of the system or any portion thereof by either Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of its obligations hereunder.
- 6.13 The Parties do not intend to create rights in or to grant remedies to any third Party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established hereunder.
- 6.14 No provision of this Agreement shall be construed so as to subject the District to regulation or review in any form by any governmental entity or agency that does not presently exercise competent jurisdiction over the District.
- 6.15 The undersigned representative(s) of each Party certifies that he or she is fully authorized by the Party whom he or she represents to execute this Agreement and to legally bind the Party to it. Each Party represents that it has full legal authority to enter into this Agreement.
- 6.16 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by the Parties, such counterparts, taken together, shall constitute a single agreement.

ATTORNEY DETERMINATION

The foregoing Intergovernmental Agreement between Electrical District No. 3, Pinal County, Arizona and the City of Maricopa, Arizona has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and within the powers and authority granted under the laws of the State of Arizona to the Parties to the Agreement.

DATED this _____ day of _____, _____.

ED3 General Counsel

City Attorney